

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDOVER HEALTHCARE, INC.

Plaintiff,

v.

Civil Action No. 13-843-LPS

3M COMPANY,

Defendant.

INTERIM STATUS REPORT

As required by the paragraph 8 of the Court's May 23, 2014 Scheduling Order (D.I. 53), the parties hereby jointly submit this interim status report.

Discovery. The parties have begun producing documents on a rolling basis. After several teleconferences meeting and conferring on disputes relating to document production and related correspondence, the parties have narrowed the issues currently requiring the Court's assistance to the following:

1. At least some of Defendant 3M's accused products were developed more than six years prior to the filing of this lawsuit. Defendant 3M believes that it is not required to produce its research and development documents for the accused products that are more than six years old because of the six-year provision of paragraph 4(e) of the Default Standard for Discovery in this district, which is incorporated into the Court's Scheduling Order (D.I. 53 at ¶ 1). 3M believes there is not good cause for such production, because Andover waited nearly 14 years to bring this lawsuit against 3M despite knowledge of the alleged infringing product. Plaintiff Andover believes there is good cause for 3M to be required to

produce such documents at least because they are likely to contain unique documents relevant to infringement, validity, and willfulness.

2. Plaintiff Andover served its First Set of Document Requests on Defendant 3M on April 10, 2014, and 3M served its First Set of Document Request on Andover on April 15, 2014. Andover notes that although over 6 months have elapsed since then, 3M will not commit to finish producing its documents responsive to those requests any sooner than February 17, 2015, almost 4 months from now. Andover believes the parties should be able to complete their review and production of non-privileged documents responsive to each others' first set of document requests within 1 month, so that they can begin taking fact depositions soon afterwards. 3M notes that the court-ordered substantial completion date is February 17, 2015, that to-date 3M has produced three times as many pages as Andover, and that 3M plans to continue to produce documents on a rolling basis. 3M does not believe that the Court should revisit its substantial completion date as set forth in the scheduling order. (D.I. 53 at ¶ 3(b).)

The parties expect to present these issues to the Court pursuant to the Court's discovery dispute procedure shortly.

Claim construction. The parties have agreed to exchange their proposed claim constructions this Wednesday, October 22, 2014. Pursuant to the Scheduling Order, the parties' Joint Claim Construction Chart is due on November 3, 2014, with opening claim construction briefs due on December 5, 2014.

3M's Motion to Stay. On April 15, 2014, 3M filed a motion to stay this litigation pending resolution of an *Inter Partes Review* ("IPR"). (D.I. 32.) Andover has opposed the

motion (D.I. 40), which is still pending. On October 20, 2014, the Patent Office denied institution of the IPR. 3M expects to file a motion for rehearing within 30 days. Should 3M's motion for rehearing be denied, 3M will withdraw the pending motion to stay. The parties will keep the Court apprised of the status of the IPR.

Respectfully submitted,

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